

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Case No. 1

On behalf of K. Hotaling, for payment of compensation of 70 hours pro-rata pay at his rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Classification Rules - INSPECTOR and SIGNALMAN, when it allowed or permitted a Signal Inspector to wire a Signal control panel in the dispatcher's office in Springfield, MA, for ten hours each on March 10, 11, 12, 16, 17, 18 and 19, 1987. Carrier file SD-2440.

Case No. 2

On behalf of K. Hotaling, for five hours pay at his pro-rata rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Scope and Classification Rules, when it allowed or permitted a Project Engineer and a Signal Foreman to wire a power switch machine at CP57 on March 26, 1987." Carrier file SD-2441.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

There are two claims presented for determination by this Board. On the dates in question, Claimant was assigned as a Signaller, headquartered at West Springfield, Massachusetts. Claimant's assignment was to work four days, ten hours each, from 6:30 A.M. to 5:00 P.M., Monday through Thursday, with rest days Friday, Saturday and Sunday.

The claim in Case No. 1 arose when Carrier used a BRS Signal Inspector to perform work incident to wiring the signal control panel at the Train Dispatcher's Office in Springfield, Massachusetts on March 10-19, 1987.

The claim in Case No. 2 arose when Carrier used a BRS Signal Foreman to perform work incident to wiring the switch machine at CP-57 on March 26, 1987. In this case, the Organization also alleges that a non-agreement Project Engineer assisted the Signal Foreman.

It is the Organization's position that the work at issue in the instant claims falls within the Scope Rule and the Classification Rule of the current Agreement, which states, in pertinent part as follows:

"SCOPE

These rules shall constitute an agreement between the Consolidated Rail Corporation and its employees, represented by the Brotherhood of Railroad Signalmen, covering rates of pay, hours of service and working conditions of employees in the signal shop or in the field, in the construction, installation, repair, inspection, testing, maintenance or removal of the following equipment and control systems, including component parts, appurtenances and power supplies (Including motor generator sets) used in connection with the systems covered by this Agreement and all other work recognized as signal work:

- Interlocking systems
- Block signal systems
- Car retarder systems
- Remote control of switch and signal systems
- Wayside train signals
- Train order or train start signals
- Cab signal, train control or train stop systems other than that portion on moving equipment
- Signal locking and detecting systems on movable bridges (except power wedges)
- Spring switches
- Weigh-in-motion scale systems
- Highway-railroad grades crossing protection systems (other than those manually operated)
- Dragging equipment detector systems
- High or wide load detector systems
- Slide detector systems
- Flood detector systems
- Broken flange detector systems

Broken wheel detector systems
Hot box detector systems
Presence or motion detectors
Printed circuit boards
Switch heaters
Electric lighted switch lamps
Pipelines and pipeline connections used for
mechanical operation or locking of derails,
switches and signals
Signal batteries
Signal pole lines
Impedance bonds, signal bonds and track
connection leads
Relay houses and relay cases
Compressed air plants and compressed air
distributing systems installed wholly or
primarily for railroad interlocking,
signaling, or retarder systems

Carpentry, painting, welding, cutting
foundation support, concrete work, digging
and backfilling trenches in connection with
installing, repairing or maintaining any
signal apparatus or device
Operation of all machine tools, back hoes,
trenchers, hoisting equipment, hole diggers,
pipe pushers or other equipment used in con-
struction, installation, maintenance or
repair of signal systems. (In instances
where equipment has been rented with an
operator, an employee in the mechanic (or
higher) class will be assigned to work with
the operator on each piece of rental equip-
ment.)
Removal of brush or trees that impair the
operation of the signal systems
Manning of trouble desk positions

* * * *

It is understood and agreed in the application of
this Scope that any work specified herein which is
being performed on the property of any former com-
ponent railroad by employees other than those repre-
sented by the Brotherhood of Railroad Signalmen may
continue to be performed by such other employees at
the location at which such work was performed by past
practice or agreement on the effective date of this
Agreement; and it is also understood that work not

included within this Scope which is being performed on the property of any former component railroad by employees represented by the Brotherhood of Railroad Signalmen will not be removed from such employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement.

CLASSIFICATIONS

INSPECTOR

An employee assigned to direct the work of employees and to inspect the facilities, equipment or apparatus installed, maintained or repaired by employees under this agreement, and to perform the C&S 27 Tests (See Appendix 'F').

* * * *

SIGNALMAN

An employee assigned to perform installation, construction and repair work covered by this agreement."

The Organization contends that the foregoing Rules make clear that inspectors and foremen direct the work force. There are no expressed exceptions allowing the Foreman and Inspector to perform the duties of the employees assigned to them. The Organization argues that to allow Inspector and Foremen to perform the work of those employees assigned to them would give the Carrier latitude of work assignment not sanctioned by the Rules or intended by the parties.

Carrier maintains that the Rules relied upon by the Organization are not job descriptions but, rather, were established to effectuate and protect employees' rates of pay, promotions and seniority rights provided for in the Agreement. Carrier asserts that the Scope and Classification Rules are not exclusive grants of work to each classification, a proposition which has been recognized in numerous Awards. Moreover, as to the Project Engineer in Case #2, the Carrier contends that he worked in a purely instructional manner and therefore there is no evidence that he even arguably performed work within the Scope of the employee's Agreement. Finally, Carrier submits that Claimant was on duty and under pay on the claim dates in question and, in the event of a finding that the Agreement was violated, no monetary Award should be issued.

After careful consideration of the record in its entirety and the precedent Awards cited by both parties, we are convinced that the instant claims lack Rule support and therefore must be denied. Most persuasive, perhaps, is the fact that the cases cited by the Organization are so demonstrably distinguishable from the instant matter. In Second Division Award

7504, for example, the Board sustained a claim in which an Assistant General Foreman installed office heating and air-conditioning controls, work normally assigned to the electrician craft. In concluding that the Assistant Foremen improperly performed craft work, the Board relied upon an express provision of the Agreement which stated:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at point where no mechanics are employed."

Other much older Awards relied upon by the Organization address the issue of intercraft disputes, a matter which we view as inapposite here. (See Third Division Award 10026.)

It is well-established that the Scope and Classification Rules relied upon by the Organization do not confer reservation of work to unit employees. See Third Division Awards 27756; 25546; 12668; 21753; and 22144. In the absence of a specific contractual prohibition or limitation to the contrary, and lacking any evidence of past practice, it must be concluded that the work performed by the Foreman and Inspector did not violate the Agreement.

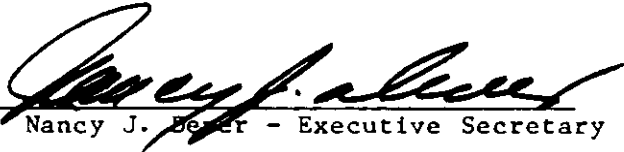
Finally, as to the work performed by the Project Engineer, we note that the Organization never rebutted Carrier's statement that he was acting in a purely instructional manner. Given that state of the record, that portion of the claim must also be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1992.